Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 417 OF 2018

Mahesh Prasad Singh
S/o Bramhadev Prasad Singh,
Aged about 53 years,
r/o UGF-101 Block No-K,
Prabhu Residency Gold,
Near Socorro Panchayat,
Socorro, Porvorim,
Bardez Goa. ….. Petitioner

Versus

1. The Additional
Commissioner of
Central Excise & Service Tax, Goa
EDC Complex, Plot No.6,
Patto Plaza, Panaji Goa. 403 001.

2. The Assistant Commissioner of Central
Goods and Service Tax, Division-I, GOA,
6th Floor, GST Bhavan, EDC Complex,
Plot No.6, Patto Plaza, Panaji Goa. 403001.

3. HDFC Bank Ltd.,
SH1, SH2, SH3, "Aldona Centre",
Cottarbhat, Aldona,
Bardez Goa.
Through its Branch Manager. ….. Respondents

Mr. Sandesh Padiyar and Mr. P. Shirodkar, Advocates for the Petitioner.

Ms. Priyanka Kamat, Standing Counsel for Respondent Nos.1 and 2.

Mr. B. Khandeparkar, Advocate for Respondent No.3.

Mr. D. Gautam, Inspector (GST) present in person.

Coram:- CHIEF JUSTICE &
M. S. SONAK, J.

Date:- 22nd February 2019.

P.C.:

Heard Mr. S.D. Padiyar, learned Counsel for the Petitioner, Ms. Priyanka Kamat, learned Standing Counsel for Respondent No.1 and 2 and Mr. B. Khandeparkar, learned Counsel for Respondent No.3.

2. Rule. Rule is made returnable forthwith with the consent and at the request of the learned Counsel for the parties.

3. After this matter was argued for sometime, the learned Counsel for the Petitioner and Respondents No.1 and 2 (contesting parties) requested that this petition be disposed of with the following agreed order :

(i) The petitioner is granted liberty to institute an appeal in terms of Section 85 of the Finance Act, 1994 to the Appropriate Appellate

Authority, against the impugned order dated 9 December 2010, within a period of four weeks from today;

(ii) If such an appeal is indeed filed by the Petitioner within four weeks from today, then, the same shall be considered and disposed of by the Appellate Authority, on its own merits and in accordance with law, without going into the issue of limitation;

(iii) The amount already recovered by Respondents No.1 and 2 from the Petitioner's Bank Account with the Respondent No.3, shall abide by the final orders that shall be made by the Appellate Authority in the appeal so instituted;

(iv) Since the Respondents No. 1 and 2 have already recovered the amount from the Petitioner, the Appellate Authority shall not insist upon any requirement of pre-deposit or deposit of the amount involved in the Appeal. The requirement of deposit/predeposit, consequently stands complied;

(v) The Petitioner shall be at liberty to institute the appeal against the impugned order dated 9 December 2010 by annexing to the Memo of Appeal a copy of the impugned Order dated 9 December 2010. This means that the Appellate Authority shall not insist upon the appeal memo being accompanied by any certified copy of the impugned order dated 9 December 2010;

(vi) All contentions of all the parties, on merits of the matter, are left open to be adjudicated by the Appellate Authority;

(vii) The Appellate Authority shall endeavour to dispose of the appeal as expeditiously as possible and, in any case, within a period of four months from the date of its institution;

4. The learned Counsel for the parties state that the aforesaid agreement is on the basis of instructions from their respective parties, in particular, Mr. D. Gautam, Inspector GST, who is present in the Court.

5. This order is made in the peculiar facts and circumstances of this case, including, in particular, the circumstance that there is no proof of service of the impugned order dated 9 December 2010 upon the Petitioner. Accordingly, there is no question of this order being treated as some sort of precedent in any later cases.

6. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

7. All concerned to act on the basis of an authenticated copy of this order.

M. S. SONAK, J. ***CHIEF JUSTICE***